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United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Salt Lake Field Office
2370 South 2300 West
Salt Lake City, Utah 84119
ph: (801) 977-4300; Fax: (801) 977-4299
www.blm.gov/ut



IN REPLY REFER TO:

3809

U-75737

(UT-023)

RECEIVED
JUN 16 2008
DIV. OF OIL, GAS & MINING

JUN 13 2008

Certified Mail Number- 7007 1490 0000 0215 7298

Return Receipt Requested

DECISION

Mr. Russell Feller

A & R Leasing, L.L.C.

688 East Chad Ranch Road

Veyo, Utah 84782-4141

43 CFR 3809

Noncompliance Order

Noncompliance Order

On January 31, 2007, the Bureau of Land Management (BLM) Salt Lake Field Office (SLFO) issued to you a "Notice Expired" decision letter informing you that your previously existing notice for mining operation (Notice) at Fisher Creek (U-75737) on the Glacial Green #1 placer mining claim had expired effective January 22, 2007. BLM's January 31, 2007 decision stated, in part, that:

"All mining activities on the subject claim must cease immediately. The only activities that are currently permitted are those activities related to reclamation of the surface disturbance associated with your mining operations. Within 30 days of receipt of this decision, a reclamation plan and schedule for final reclamation of the site must be submitted to this office. The reclamation plan and schedule for reclamation must be accepted by the Salt Lake Field Office prior to commencing any reclamation work on the ground."

"If you wish to continue conducting mining activities on the subject mining claim, you must submit a Plan of Operations (Plan) to this office within 30 days of receipt of this decision. The information that must be included in the Plan is described at 43 CFR 3809.401. The Plan must be approved, and a financial guarantee accepted, prior to any additional earth disturbing activities at this site."

The record shows that you received BLM's January 31, 2007 decision on February 6, 2007. The record also shows that you *failed to comply* with the decision, in that you have not to date submitted to BLM a reclamation plan or Plan of Operations for U-75737.

On September 21, and October 4, 2007, BLM conducted a site inspection which found that you continued to occupy, and conduct mining operations at the subject site. Equipment and debris were observed within and around the pit/quarry area and it appeared that earthmoving activities had taken place at the site. Subsequently, you received a letter from this office on December 17, 2007, informing you that your activity at the site was unauthorized.

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On May 20, 2008, BLM personnel inspected the site and observed that additional unauthorized activity had taken place since the last inspection in October, 2007. No equipment was observed at the site, however, BLM personnel documented that drilling and blasting activities had taken place. In addition, blasting materials including detonation cord and a blasting cap were observed in the pit/quarry area.

Your continued activity at the subject site is unauthorized and in violation of 43 CFR 3809. Specifically, you are in violation of the following regulations:

§3809.335(a)(1,2) When your notice expires you must cease operations, except reclamation and complete reclamation promptly.

At the expiration of your Notice, you did not cease operations, submit a reclamation plan, reclaim the site, or submit a Plan of Operations. Accordingly, BLM considers you to be conducting operations without authorization and in noncompliance.

§3809.11(a) You must submit a plan of operations and obtain BLM's approval before beginning operations greater than casual use.

You have been conducting operations at the site greater than casual use, including earthmoving, drilling, and blasting, without submitting a Plan of Operations and obtaining BLM's approval.

This noncompliance order is issued under the authority of:

43 CFR 3809.601, as your operation is not in compliance with §3809.335, and §3809.11(a).

Upon receipt of this order, under the authority cited above, you must immediately cease all unauthorized activity at the subject site.

Within 30 days of receipt of this letter you must complete one of the following:

- 1) If you wish to continue mining activities on the subject mining claim, you must submit a Plan of Operations to this office. The Plan must be approved, and a financial guarantee accepted, prior to any additional earth disturbing activities at this site.
- 2) If you do not wish to continue mining activity you must begin reclamation promptly. Reclamation should be conducted according to the standards described in your August, 1997 Notice application. This includes stabilization of the highwall by backfilling to 45 degrees or less, reshaping the land to near its original contour, and redistributing the topsoil and overburden. The entire length of the access road, from the pit down to the switchback would also need to be reclaimed. Finally, the reclaimed areas would need to be ripped, harrowed, or disced, then reseeded.

If you fail to submit the aforementioned documentation or you refuse to or are unable to conduct reclamation of the site, the BLM may initiate forfeiture of all or part of your financial guarantee (§3809.595) and begin reclaiming the site and the access road leading to it.

If you do not agree and are adversely affected by this decision, in accordance with 43 CFR 3809.804, you may have the Utah BLM State Director review this decision. If you request a State Director review, the request must be received in the Utah BLM State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155, no later than 30 calendar days after you receive this decision. A copy of the request must also be sent to this office. The request must be in accordance with the provisions provided in 43 CFR 3809.805. If a State Director review is requested, this decision will remain in effect while the State Director review is pending, unless a stay is granted by the State Director. Standards for obtaining a stay are given below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

If the Utah State Director does not make a decision on whether to accept your request for review of this decision within 21 days of receipt of the request, you should consider the request declined and you may appeal this decision to the Interior Board of Land Appeals (IBLA). You then have 30 days in which to file your notice of appeal with the IBLA (see procedures below).

If you wish to bypass the State Director review, this decision may be appealed directly to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in the Salt Lake Field Office within 30 days of receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulations 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of this notice of appeal and petition for a stay must also be submitted to each party named in the decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

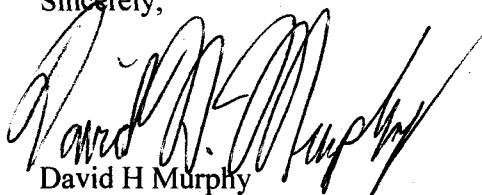
Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

If you have any questions, or require additional information, please contact Stephen Allen of my staff at (801) 977-4360.

Sincerely,



David H Murphy
Assistant Field Manager
Nonrenewable Resources

Cc: Lynn Kunzler UDOGM